

SENATE BILL No. 403

DIGEST OF INTRODUCED BILL

Citations Affected: IC 3-5; IC 3-6; IC 3-7; IC 3-11; IC 3-11.5; IC 3-11.7; IC 3-12-3; IC 3-14.

Synopsis: Registration and voting. Provides that certain voters may cast a provisional ballot. Permits a county election board to eliminate certain precinct election offices under certain circumstances. Permits individuals who are between 16 and 18 years of age to serve as poll clerks and election sheriffs under certain circumstances. Provides that any voter may vote by absentee ballot in the office of the circuit court clerk. Provides for submission of absentee votes by fax transmission by certain voters under certain circumstances. Makes other changes relating to casting absentee ballots. Provides that a county election board may establish the number of voters a precinct may contain that permits the precinct to have its polls located at the same location as another precinct. Requires the attorney general to establish a toll free telephone number to receive complaints regarding violations of Indiana election law. Provides for late registration of absent uniformed services voters under certain circumstances. Repeals superseded statutes relating to: (1) registration of absent uniformed services voters and overseas voters; and (2) counting absentee ballots at a central location.

Effective: July 1, 2002; January 1, 2003.

Skillman

January 10, 2002, read first time and referred to Committee on Legislative Apportionment & Elections.

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Second Regular Session 112th General Assembly (2002)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2001 General Assembly.

SENATE BILL No. 403

A BILL FOR AN ACT to amend the Indiana Code concerning elections.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 3-5-2-23.7 IS ADDED TO THE INDIANA CODE
2 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE
3 JANUARY 1, 2003]: **Sec. 23.7. "Fax" refers to transmission of**
4 **information by a facsimile (fax) machine.**

5 SECTION 2. IC 3-5-2-40.7 IS ADDED TO THE INDIANA CODE
6 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
7 1, 2002]: **Sec. 40.7. "Provisional voter" refers to an individual who**
8 **is entitled to cast a provisional ballot under IC 3-11.7.**

9 SECTION 3. IC 3-5-2-41.7 IS ADDED TO THE INDIANA CODE
10 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
11 1, 2002]: **Sec. 41.7. "Registration agency" refers to any of the**
12 **following:**

13 **(1) The bureau of motor vehicles.**

14 **(2) Any other agency at which individuals may register to vote**
15 **under IC 3-7.**

16 SECTION 4. IC 3-5-4-8, AS AMENDED BY P.L.38-1999,
17 SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE



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JULY 1, 2002]: Sec. 8. (a) Except as provided in subsection (e), but notwithstanding any other statute, whenever the commission acts under IC 3-6-4.1-14 to approve a uniform election or registration form for use throughout Indiana or to approve a revision to an existing form, a person must use the most recent version of the form approved by the commission to comply with this title after the effective date of the commission's order approving the form.

(b) Except as provided in subsection (d) or (f), before an order approving a form takes effect under this section, the election division shall transmit a copy of each form or revised form approved by the order to the following:

(1) Each circuit court clerk, if the commission determines that the form is primarily used by a candidate, a county election board member, a county or town political party, or for absentee **or provisional** ballot purposes.

(2) Each county voter registration office, if the commission determines that the form is primarily used in voter registration.

(3) The state chairman of each major political party.

(4) The state chairman of any other political party who has filed a written request with the election division during the preceding twelve (12) months to be furnished with copies of forms.

(c) The election division, an election board, a circuit court clerk, a county voter registration office, or any other official responsible for receiving a filing under this title shall reject a filing that does not comply with this section.

(d) The commission shall specify the effective date of the form or revised form and may:

(1) delay the effective date of the approval of a form or revised form; and

(2) permit an earlier approved version of the form or an alternative form to be used before the effective date of the form; if the commission determines that an emergency requires the use of the form before copies can be transmitted to all persons entitled to receive copies of the form under subsection (b).

(e) This subsection applies to a form permitting an individual to apply for voter registration or to amend the individual's existing voter registration record. The commission may allow an earlier approved version of the form to be used if the:

(1) earlier version of the form complies with all other requirements imposed under NVRA or this title; and

(2) commission determines that the existing stock of the form should be exhausted to prevent waste and unnecessary expense.

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(f) This subsection applies to a form that the commission determines is used primarily by the election division. The commission may provide that an order concerning a form described by this subsection is effective immediately upon adoption, without any requirement to distribute the form to other persons.

SECTION 5. IC 3-6-6-2, AS AMENDED BY P.L.176-1999, SECTION 11, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2003]: Sec. 2. (a) **Except as provided in section 38 of this chapter**, each county election board shall appoint two (2) poll clerks for each precinct in the county.

(b) Each county chairman of a major political party of the county is entitled to nominate one (1) poll clerk under section 9 of this chapter.

(c) **Except as provided in section 39 of this chapter**, the poll clerks must be voters of the county.

SECTION 6. IC 3-6-6-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2003]: Sec. 4. A county election board shall adopt a written resolution ~~at least twenty-one (21)~~ **not later than twenty-eight (28)** days before election day designating the precincts for which assistant clerks are to be appointed. The county election board shall file a copy of the resolution in the office of the circuit court clerk and shall mail copies to the county chairmen of the major political parties of the county.

SECTION 7. IC 3-6-6-5, AS AMENDED BY P.L.176-1999, SECTION 13, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2003]: Sec. 5. (a) Except as provided in ~~subsection (d)~~, **section 38 of this chapter**, each county election board shall appoint two (2) election sheriffs for each precinct in the county.

(b) Each county chairman of a major political party of the county is entitled to nominate one (1) election sheriff under section 9 of this chapter.

(c) **Except as provided in section 39 of this chapter**, the sheriffs must be voters of the county.

~~(d) A county executive may issue an order providing that the judges of each precinct named in the order shall perform the duties and have the rights of the election sheriffs of the precinct named in the order. An order issued under this subsection remains in effect until the county executive rescinds the order.~~

SECTION 8. IC 3-6-6-6 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2003]: Sec. 6. Each inspector, judge, poll clerk, assistant poll clerk, and election sheriff who is:

- (1) a voter of the county; and
- (2) not a resident of the precinct;

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is entitled to vote by absentee ballot.

SECTION 9. IC 3-6-6-9 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2003]: Sec. 9. The county chairmen of the major political parties of a county may nominate voters for the following precinct election offices **who will serve in the precinct on election day:**

- (1) Judge.
- (2) Poll clerk.
- (3) Assistant poll clerk.
- (4) Election sheriff.

SECTION 10. IC 3-6-6-10, AS AMENDED BY P.L.176-1999, SECTION 14, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2003]: Sec. 10. (a) A county chairman may make nominations for precinct election offices by filing the nominations in writing with the circuit court clerk ~~no not~~ later than noon ~~fourteen (14)~~ **twenty-one (21)** days before the election.

(b) This subsection does not apply to the office of precinct inspector. A county chairman may specify in the nomination of an individual for a precinct election office that the individual is nominated to serve until noon on election day and that another individual is nominated to serve in the same precinct election office beginning at noon on election day until the expiration of the term of the office under section 37(b) of this chapter.

SECTION 11. IC 3-6-6-11, AS AMENDED BY P.L.176-1999, SECTION 15, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2003]: Sec. 11. (a) A county election board shall appoint the ~~voters individuals~~ who are nominated for precinct election offices by the county chairmen **if the individuals are otherwise eligible under this chapter to serve in the precinct election offices for which they are nominated.**

(b) This subsection does not apply to the office of precinct inspector. This subsection applies to an appointment to a precinct election office made following a nomination by a county chairman under this chapter. The county election board shall provide that an appointment of an individual to a precinct election office:

- (1) expires at noon on election day; or
- (2) begins at noon on election day and expires under section 37(b) of this chapter;

if the nomination made by the county chairman specifies that the nomination is made for a term that begins or expires at those times.

(c) This subsection does not apply to the office of precinct inspector. This subsection applies to an appointment to a precinct election office

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made by a county election board under section 13(b) of this chapter.
The county election board may appoint an individual to a precinct election office for a term that:

- (1) expires at noon on election day; or
- (2) begins at noon on election day and expires under section 37(b) of this chapter.

SECTION 12. IC 3-6-6-13 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2003]: Sec. 13. (a) A county election board shall fill a vacancy in a precinct election office before the hour set for the opening of the polls, upon the nomination of the appropriate county chairman.

(b) This subsection applies to a precinct election office when, at noon, ~~seven (7)~~ **fourteen (14)** days before election day, the appropriate county chairman has made no nomination for the office. The county election board, by unanimous vote of the entire membership of the board, may fill the office by appointing an individual who would be eligible to serve in the office if nominated by the county chairman.

SECTION 13. IC 3-6-6-23 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2003]: Sec. 23. The oath prescribed for a precinct election officer must be signed before a person authorized to administer oaths and contain the following information:

I do solemnly swear (or affirm) the following:

- (1) I will support the Constitution of the United States and the Constitution of the State of Indiana.
- (2) I will faithfully and impartially discharge the duties of inspector (or judge, poll clerk, assistant poll clerk, or sheriff) of this precinct under the law.
- (3) I will not knowingly permit any person to vote who is not qualified and will not knowingly refuse the vote of any qualified voter or cause any delay to any person offering to vote other than is necessary to procure satisfactory information of the qualification of that person as a voter.
- (4) I am now a bona fide resident of the county in which the precinct in which I am to act as a member of the election board is situated and, **if required by law**, am a qualified voter of that county.
- (5) I will not disclose or communicate to any person how any voter has voted at this election or how any ballot has been folded or marked.
- (6) I am able to read, write, and speak the English language.
- (7) I have no property bet or wagered on the result of this election.



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(8) I am not a candidate to be voted for at this election, except as an unopposed candidate for a political party office.

(9) If I am serving as an inspector, I am not the chairman or treasurer of the committee of a candidate whose name appears on the ballot.

(10) I am not related to any person to be voted for at this election as the spouse, parent, father-in-law, mother-in-law, child, son-in-law, daughter-in-law, grandparent, grandchild, brother, sister, brother-in-law, sister-in-law, uncle, aunt, nephew, or niece of that person, unless that person is an unopposed candidate.

SECTION 14. IC 3-6-6-38 IS ADDED TO THE INDIANA CODE AS A **NEW SECTION** TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2003]: **Sec. 38. (a) As used in this section, "omitted precinct election officer" refers to a precinct election officer that a precinct is not required to have by a resolution adopted under this section.**

(b) Notwithstanding other provisions of this title, a county election board may adopt a resolution to provide that specified precincts or all precincts of the county are not required to have any or all of the following precinct election officers:

(1) Sheriff.

(2) Poll clerks.

(c) A resolution adopted under this section must be adopted by unanimous vote of the entire membership of the board.

(d) A resolution adopted under this section must state the following:

(1) The precincts to which the resolution applies.

(2) For each precinct identified in the resolution, which precinct election officers are omitted precinct election officers.

(3) For each precinct identified in the resolution, which precinct election officers will perform the duties required by this title of the omitted precinct election officers.

(e) Notwithstanding any other law, the precinct election officer specified in a resolution adopted under this section shall perform the duties of the omitted precinct election officers as stated in the resolution.

(f) A resolution adopted under this section expires December 31 after the resolution is adopted.

SECTION 15. IC 3-6-6-39 IS ADDED TO THE INDIANA CODE AS A **NEW SECTION** TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2003]: **Sec. 39. The county election board may permit**

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an individual who is not a voter to be a poll clerk or an election sheriff if the individual satisfies all the following:

- (1) The individual is at least sixteen (16) years of age but not more than seventeen (17) years of age.
- (2) The individual is a citizen of the United States.
- (3) The individual is a resident of the county.
- (4) The individual has a cumulative grade point average equivalent to not less than 3.0 on a 4.0 scale.
- (5) The individual has the written approval of the principal of the school the individual attends at the time of the appointment.
- (6) The individual has the approval of the individual's parent or legal guardian.
- (7) The individual has satisfactorily completed any training required by the county election board.
- (8) The individual otherwise is eligible to serve as a precinct election officer under this chapter.

SECTION 16. IC 3-6-12 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]:

Chapter 12. Investigation of Violations of Election Law

Sec. 1. The attorney general shall establish a toll free telephone number to receive complaints from individuals regarding violations of this title.

Sec. 2. The attorney general shall investigate complaints received under this chapter.

Sec. 3. If the attorney general finds that there is a basis for the complaint, the attorney general shall do the following:

- (1) Refer the complaint and the results of the investigation to the appropriate local, state, or federal agency. If the attorney general determines that there is a basis to believe that there has been a violation of criminal law, the attorney general shall refer the complaint to the appropriate federal agencies and the appropriate prosecuting attorney.
- (2) Report the results of the attorney general's investigation to the individual making the complaint.

SECTION 17. IC 3-7-36-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2003]: Sec. 2. A voter described in section 1 of this chapter who **wants to:**

- (1) ~~is eligible for an vote~~ by absentee ballot under IC 3-11-4; and
- (2) ~~wants to~~ execute an affidavit or a form for voter registration; is not required to sign the affidavit or form in the presence of a person



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1 authorized to administer an oath, and the affidavit or form need not be
2 signed by such a person.

3 SECTION 18. IC 3-7-36-5 IS AMENDED TO READ AS
4 FOLLOWS [EFFECTIVE JANUARY 1, 2003]: Sec. 5. (a) This section
5 does not apply to a voter who files a combined absentee registration
6 form and absentee ballot request.

7 (b) When a circuit court clerk or board of registration receives an
8 application for absentee registration, the clerk or board shall promptly
9 mail or deliver to the applicant the affidavit prescribed by this ~~chapter~~
10 **title** for the registration of an absentee voter by absentee process.

11 (c) When the properly executed and certified affidavit is returned to
12 the clerk or board, the applicant becomes a registered voter in the
13 precinct of residence.

14 SECTION 19. IC 3-7-36-11 IS AMENDED TO READ AS
15 FOLLOWS [EFFECTIVE JANUARY 1, 2003]: Sec. 11. ~~A voter whose~~
16 ~~registration has been canceled according~~ (a) **This section applies only**
17 **to an absent uniformed services voter described in subsection (b)**
18 **who applies to register to vote:**

19 (1) **after the date described in IC 3-7-13-11; and**

20 (2) **before the date that the certified list of voters is prepared**
21 **under IC 3-7-29-1.**

22 (b) **An absent uniformed services voter who otherwise would be**
23 **entitled to register to this article while in the armed services of the**
24 **United States vote under Indiana law may, upon return discharge**
25 **from service have registration reinstated at any time or reassignment,**
26 **register to vote by doing the following:**

27 (1) **Showing either of the following to the circuit court clerk or**
28 **board of registration:**

29 (A) **An honorable discharge from service to the circuit court**
30 **clerk or board of registration except during the period**
31 **beginning on the date that the certified list of voters is**
32 **prepared under IC 3-7-29-1 and ending on election day: of:**

33 (i) **the voter;**

34 (ii) **the voter's spouse; or**

35 (iii) **the individual of whom the voter is a dependent.**

36 (B) **A copy of the government movement orders of:**

37 (i) **the voter;**

38 (ii) **the voter's spouse; or**

39 (iii) **the individual of whom the voter is a dependent.**

40 (2) **Completing a registration affidavit.**

41 SECTION 20. IC 3-7-36-14 IS ADDED TO THE INDIANA CODE
42 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE



JANUARY 1, 2003]: Sec. 14. (a) This section applies to an absent uniformed services voter described in subsection (b) who applies to register to vote during the period:

- (1) beginning on the date that the certified list of voters is prepared under IC 3-7-29-1; and
- (2) ending at noon election day.

(b) An absent uniformed services voter who otherwise would be entitled to register to vote under Indiana law may, upon discharge from service or reassignment, register to vote by doing the following:

- (1) Showing either of the following to the circuit court clerk:

- (A) An honorable discharge from service of:

- (i) the voter;
- (ii) the voter's spouse; or
- (iii) the individual of whom the voter is a dependent.

- (B) A copy of the government movement orders of:

- (i) the voter;
- (ii) the voter's spouse; or
- (iii) the individual of whom the voter is a dependent.

- (2) Completing a registration affidavit.

(c) A voter who registers under this section may vote at the next election only by absentee ballot at the office of the circuit court clerk at the time the voter registers under this section. A voter who wants to vote under this subsection must do both of the following:

- (1) Complete an application for an absentee ballot.
- (2) Sign an affidavit that the voter has not voted at any other precinct in the election.

The voter may vote at subsequent elections as otherwise provided in this title.

(d) If the voter votes by absentee ballot under this section, the circuit court clerk shall do the following:

- (1) Certify in writing that the voter registered under this section.
- (2) Attach the certification to the voter's absentee ballot envelope.

(e) If the county has a board of registration, the circuit court clerk shall promptly mail or deliver the voter's registration affidavit to the board of registration.

(f) If the voter chooses not to vote under subsection (c), the clerk or board shall register the voter on the first day of the next registration period.

SECTION 21. IC 3-7-48-1 IS AMENDED TO READ AS



1 FOLLOWS [EFFECTIVE JANUARY 1, 2003]: Sec. 1. **(a)** Except as
 2 otherwise provided by NVRA or in this chapter, a person whose name
 3 does not appear on the registration record may not vote, unless the
 4 circuit court clerk or board of registration provides a signed certificate
 5 of error in the office where the permanent registration record is kept
 6 showing that the voter is legally registered in the precinct where the
 7 voter resides.

8 **(b) A person whose name does not appear on the registration**
 9 **record may cast a provisional ballot as provided in IC 3-11.7.**

10 SECTION 22. IC 3-11-3-2 IS AMENDED TO READ AS
 11 FOLLOWS [EFFECTIVE JANUARY 1, 2003]: Sec. 2. (a) The election
 12 division shall have printed and shall distribute to the circuit court clerk
 13 of each county at each general election **the following:**

14 (1) If only paper ballots are used, the number of state paper
 15 ballots (and presidential ballots in a presidential election year)
 16 equal to one hundred percent (100%) of the number of voters in
 17 the county. **and**

18 (2) If voting machines, ballot card voting systems, or electronic
 19 voting systems are used, only the number of presidential and state
 20 paper ballots that, in the election division's judgment, are
 21 necessary to meet an emergency.

22 **(3) After December 31, 2003, the number of provisional**
 23 **ballots for state offices (and provisional ballots for President**
 24 **of the United States in presidential election years) that the**
 25 **election division considers necessary.**

26 (b) The paper ballots shall be wrapped in packages, plainly marked,
 27 and securely sealed.

28 (c) **The provisional ballots shall be separately wrapped in**
 29 **packages from the other paper ballots, plainly marked, and**
 30 **securely sealed.**

31 (d) The clerk shall give a receipt for the paper ballots **and the**
 32 **provisional ballots.**

33 SECTION 23. IC 3-11-3-6, AS AMENDED BY P.L.176-1999,
 34 SECTION 66, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 35 JANUARY 1, 2003]: Sec. 6. **(a)** The election division shall deliver:

36 **(1) the state and presidential paper ballots; and**

37 **(2) after December 31, 2003, the provisional ballots for state**
 38 **offices and presidential provisional ballots;**

39 by certified mail, or by another means of delivery that includes a return
 40 receipt.

41 **(b) The election division shall mail the paper and provisional**
 42 **ballots to:**

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- (1) each circuit court clerk; or
 (2) in a county subject to IC 3-6-5.2, the director of the board of elections and registration.

SECTION 24. IC 3-11-3-11 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2003]: Sec. 11. The county election board shall deliver the following to each inspector or the inspector's representative:

(1) The sealed package of paper ballots, **provisional ballots**, sample ballots, and any other supplies provided for the inspector's precinct by the election division.

(2) The local sample ballots, ~~and the~~ ballot labels, if any, and all poll lists, registration lists, and other supplies considered necessary to conduct the election in the inspector's precinct.

(3) The local ballots printed under the direction of the county election board as follows:

(A) The number of ballots equal to one hundred percent (100%) of the number of voters in the inspector's precinct, according to the poll list.

(B) In those precincts where voting machines, ballot card systems, or electronic voting systems are to be used, the number of paper ballots that will be required for emergency purposes only.

(C) Provisional ballots in the number considered necessary by the county election board.

(4) Twenty (20) ink pens suitable for printing the names of write-in candidates on the ballot or ballot envelope.

SECTION 25. IC 3-11-3-12 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2003]: Sec. 12. **(a)** The local ballots delivered to the inspector of each precinct under section 11 of this chapter shall be placed in a strong and stout paper envelope or bag, which shall then be tightly closed, fastened securely, and attested by the initials of the circuit court clerk or the clerk's designee in the presence of the inspector or the inspector's representative. The inspector shall sign a receipt for the ballots. The ballot packages may not be opened until:

(1) they have been delivered to the precinct election board to which they are directed; and

(2) the precinct election board is fully organized and ready for the reception of votes.

(b) The local provisional ballots delivered to the inspector of each precinct under section 11 of this chapter shall be placed in a strong and stout paper envelope or bag, separate from the bag

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described in subsection (a), which shall then be tightly closed, fastened securely, and attested by the initials of the circuit court clerk or the clerk's designee in the presence of the inspector or the inspector's representative. The inspector shall sign a receipt for the provisional ballots. The provisional ballot packages may not be opened until:

(1) they have been delivered to the precinct election board to which they are directed; and

(2) the precinct election board is fully organized and ready to receive votes.

SECTION 26. IC 3-11-3-30 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2003]: Sec. 30. The circuit court clerk, if time permits before the ballots are delivered to the precincts, the poll clerks, or members of the absentee voter board, shall put one (1) of the pasters required by sections 29 and 29.5 of this chapter in the proper place on each ballot label bearing the name of the former candidate and on each paper ballot, **provisional ballot**, or ballot card to be voted in the precinct before they sign their initials on the ballot. The circuit court clerk shall put one (1) of the pasters on each ballot to be voted by an absentee voter before the clerk signs the ballot.

SECTION 27. IC 3-11-3-31 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2003]: Sec. 31. (a) Each county election board shall preserve the unused ballots that are left over after supplying the precincts, as prescribed by section 11 of this chapter. The ballots shall be preserved until expiration of the time for filing a contest or recount petition under IC 3-12.

(b) The board shall then destroy all of the ballots, except for one (1) **regular ballot and one (1) provisional ballot.**

SECTION 28. IC 3-11-3-32 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2003]: Sec. 32. (a) The county election board shall securely paste the one (1) **regular** ballot that was preserved under section 31 of this chapter in the election record immediately before the ~~place where the vote is to be recorded.~~ **provisional ballot placed under subsection (b).** The board shall also enter below the ballot the number of ballots:

(1) printed by the board;

(2) delivered to each messenger; and

(3) destroyed by the board.

(b) **The county election board shall securely paste the one (1) provisional ballot that was preserved under section 31 of this chapter in the election record immediately after the regular ballot placed in the record under subsection (a) and immediately before**

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the place where the vote is to be recorded. The board shall also enter below the provisional ballot the number of provisional ballots:

- (1) printed by the board;
- (2) delivered to each messenger; and
- (3) destroyed by the board.

SECTION 29. IC 3-11-4-0.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2003]: **Sec. 0.5. For purposes of this chapter, an absentee ballot application or an absentee ballot is considered "sent" to a voter if the application or ballot is:**

- (1) sent by United States mail addressed to the voter;
- (2) transmitted by fax to a number provided by the voter; or
- (3) personally given to the voter.

SECTION 30. IC 3-11-4-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2003]: **Sec. 1. (a) A voter who is otherwise qualified to vote in person, including a person eligible to vote under IC 3-10-11 or IC 3-10-12, but who expects to be:**

- (1) absent from the county on election day;
- (2) absent from the precinct of the voter's residence on election day because of service as a precinct election officer under IC 3-6-5, IC 3-6-6, or IC 3-6-8; as a watcher under IC 3-6-8, IC 3-6-9, or IC 3-6-10; as a challenger or pollbook holder under IC 3-6-7, or as a person employed by an election board to administer the election for which the absentee ballot is requested;
- (3) confined on election day to the voter's residence, to a health care facility, or to a hospital because of an illness or injury;
- (4) a voter with disabilities;
- (5) an elderly voter;
- (6) prevented from voting due to the voter's care of an individual confined to a private residence because of illness or injury; or
- (7) scheduled to work at the person's regular place of employment during the entire twelve (12) hours that the polls are open;

is eligible entitled to vote by absentee ballot. **Except as otherwise provided in this chapter, a voter voting by absentee ballot must vote in the office of the circuit court clerk or at a satellite office established under IC 3-11-10-26.3.**

(b) A county election board, by unanimous vote of its entire membership, may authorize a person who is otherwise qualified to vote in person, including a person eligible to vote under IC 3-10-11 or IC 3-10-12, to vote by absentee ballot if the board determines that the person has been hospitalized or suffered an injury following the final

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1 date and hour for applying for an absentee ballot that would prevent the
2 person from voting in person at the polls.

3 (c) The commission, by unanimous vote of its entire membership,
4 may authorize a person who is otherwise qualified to vote in person,
5 including a person eligible to vote under IC 3-10-11 or IC 3-10-12, to
6 vote by absentee ballot if the commission determines that an
7 emergency prevents the person from voting in person at a polling place.

8 (d) The absentee ballots used in subsection (b) or (c) must be the
9 same official absentee ballots as described in section 12 and 13 of this
10 chapter. Taking into consideration the amount of time remaining before
11 the election, the commission shall determine whether the absentee
12 ballots are transmitted to and from the voter by mail or personally
13 delivered. An absentee ballot that is personally delivered shall comply
14 with the requirements in sections 19, 20, and 21 of this chapter.

15 SECTION 31. IC 3-11-4-2, AS AMENDED BY P.L.38-1999,
16 SECTION 37, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
17 JANUARY 1, 2003]: Sec. 2. (a) A voter who ~~is eligible~~ **wants** to vote
18 by absentee ballot must apply to the county election board for an
19 official absentee ballot.

20 (b) If an individual applies for an absentee ballot as the properly
21 authorized attorney in fact for a voter, the attorney in fact must attach
22 a copy of the power of attorney to the application.

23 SECTION 32. IC 3-11-4-3, AS AMENDED BY P.L.176-1999,
24 SECTION 67, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
25 JANUARY 1, 2003]: Sec. 3. (a) Except as provided in subsection (b)
26 and sections 6 and 8 of this chapter, an application for an absentee
27 ballot must be received by the circuit court clerk (or, in a county
28 subject to IC 3-6-5.2, the director of the board of elections and
29 registration) not earlier than ninety (90) days before election day nor
30 later than the following:

31 (1) Noon on **election day if the voter registers to vote under**
32 **IC 3-7-36-14.**

33 **(2) Noon on** the day before election day if the voter completes the
34 application in the office of the circuit court clerk.

35 ~~(2)~~ **(3)** Noon on the day before election day if:

36 (A) the application is a mailed or hand delivered application
37 from a confined voter or voter caring for a confined person;
38 and

39 (B) the applicant requests that the absentee ballots be
40 delivered to the applicant by an absentee voter board.

41 ~~(3)~~ **(4)** Midnight on the eighth day before election day if the
42 application:

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1 (A) is a mailed application; or
 2 (B) was transmitted by a ~~facsimile~~ fax; ~~machine~~;
 3 from other voters.

4 (b) This subsection applies to an absentee ballot application from a
 5 confined voter or voter caring for a confined person that is sent by
 6 ~~facsimile~~ fax, ~~transmission~~; mailed, or hand delivered to the circuit
 7 court clerk of a county having a consolidated city. An application
 8 subject to this subsection that is sent by ~~facsimile~~ fax ~~transmission~~ or
 9 hand delivered must be received by the circuit court clerk not earlier
 10 than ninety (90) days before election day nor later than 10 p.m. on the
 11 fifth day before election day. An application subject to this subsection
 12 that is mailed must be received by the circuit court clerk not earlier
 13 than ninety (90) days before election day and not later than 10 p.m. on
 14 the eighth day before election day.

15 SECTION 33. IC 3-11-4-4 IS AMENDED TO READ AS
 16 FOLLOWS [EFFECTIVE JANUARY 1, 2003]: Sec. 4. (a)
 17 Applications may be made:

18 (1) in person;
 19 (2) by fax transmission; or
 20 (3) by mail;
 21 on application forms furnished by the county election board or
 22 approved by the commission.

23 (b) Application forms shall:
 24 (1) be furnished to all central committees in the county no later
 25 than:

26 (A) June 15, for a general election or a special election ordered
 27 under IC 3-12-8-17 or IC 3-12-11-18 following the primary
 28 election; or

29 (B) January 15, for a primary election or a special election
 30 ordered under IC 3-12-8-17 or IC 3-12-11-18 following the
 31 general election;

32 (2) be:

33 (A) mailed; or

34 (B) ~~except as provided in subsection (c)~~; transmitted by fax;
 35 ~~machine~~;

36 upon request, to a voter applying by mail, by telephone, or by fax;
 37 ~~transmission~~; and

38 (3) be delivered to a voter in person who applies at the circuit
 39 court clerk's office.

40 (c) The county election board shall:

41 (1) accept; and

42 (2) transmit;



1 applications for absentee ballots under subsection (a) ~~using a facsimile~~
 2 ~~(FAX) machine. only if the county election board owns or has access~~
 3 ~~to a FAX machine. However, by fax.~~ A county election board shall
 4 accept an application for an absentee ballot transmitted by fax machine
 5 even though the application is delivered to the county election board by
 6 a person other than the person submitting the application.

7 SECTION 34. IC 3-11-4-6, AS AMENDED BY P.L.273-2001,
 8 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 9 JANUARY 1, 2003]: Sec. 6. (a) This section applies, notwithstanding
 10 any other provision of this title, to absentee ballot applications for **the**
 11 **following:**

12 (1) An absent uniformed services voter. ~~(as defined in 42 U.S.C.~~
 13 ~~1973ff-6(1)); and~~

14 (2) An address confidentiality program participant (as defined in
 15 IC 5-26.5-1-6).

16 **(3) An overseas voter.**

17 (b) A county election board shall make blank absentee ballot
 18 applications available for persons covered by this section after
 19 November 20 preceding the election to which the application applies.
 20 Except as provided in subsection (c), the person may apply for an
 21 absentee ballot at any time after the applications are made available.

22 (c) A person covered by this section may apply for an absentee
 23 ballot for the next scheduled primary, general, or special election at any
 24 time by filing a standard form approved under 42 U.S.C. 1973ff(b).

25 (d) If the county election board receives an absentee ballot
 26 application from a person described by this section, the circuit court
 27 clerk shall mail to the person, free of postage as provided by 39 U.S.C.
 28 3406, all ballots for the election immediately upon receipt of the ballots
 29 under sections 13 and 15 of this chapter.

30 (e) Whenever ~~an absent uniformed services voter or an address~~
 31 ~~confidentiality program participant (as defined in IC 5-26.5-1-6) a~~
 32 **voter described in subsection (a)** files an application for a primary
 33 election absentee ballot and indicates on the application that:

34 (1) the voter is an absent uniformed services voter and does not
 35 expect to be in the county on general election day and on the date
 36 of any special election conducted during the twelve (12) months
 37 following the date of the application; ~~or~~

38 (2) the voter is an address confidentiality program participant; **or**

39 **(3) the voter is an overseas voter and does not expect to be in**
 40 **the county on general election day and on the date of any**
 41 **special election conducted during the twelve (12) months**
 42 **following the date of the application;**



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the application is an adequate application for a general election absentee ballot under this chapter and an absentee ballot for a special election conducted during the twelve (12) months following the date of the application. The circuit court clerk and county election board shall process this application and ~~mail~~ **send** general election and special election absentee ballots to the voter in the same manner as other general election and special election absentee ballot applications and ballots are processed and ~~mailed~~ **sent** under this chapter.

(f) The name, address, telephone number, and any other identifying information relating to a program participant (as defined in IC 5-26.5-1-6) in the address confidentiality program, as contained in a voting registration record, is declared confidential for purposes of IC 5-14-3-4(a)(1). The county voter registration office may not disclose for public inspection or copying a name, an address, a telephone number, or any other information described in this subsection, as contained in a voting registration record, except as follows:

- (1) To a law enforcement agency, upon request.
- (2) As directed by a court order.

(g) ~~This subsection applies to a county election board that owns or has access to a facsimile (FAX) machine.~~ The county election board ~~may~~ **shall** transmit and receive absentee ballots by fax ~~machine~~ to voters covered under the Uniformed and Overseas Absentee Voting Act (42 U.S.C. 1973ff) under the following circumstances:

- (1) If an emergency is declared by the President of the United States, the Congress of the United States, or the presidential designee under the Uniformed and Overseas Absentee Voting Act (42 U.S.C. 1973ff);
- (2) If otherwise mandated to do so under federal law.

an absent uniformed services voter or an overseas voter at the request of the voter. If the voter wants to submit absentee ballots by fax, the voter must separately sign and date a statement on the cover of the fax transmission that states substantively the following: "I understand that by faxing my voted ballot I am voluntarily waiving my right to a secret ballot."

(h) The county election board shall send confirmation to a voter described in subsection (g) that the voter's absentee ballot has been received as follows:

- (1) If the voter provides a fax number to which a confirmation may be sent, the county election board shall send the confirmation to the voter at the fax number provided by the voter.
- (2) If the voter provides an electronic mail address to which

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1 a confirmation may be sent, the county election board shall
 2 send the confirmation to the voter at the electronic mail
 3 address provided by the voter.

4 **(3) If the voter does not provide a fax number or an electronic**
 5 **mail address, the county election board shall send the**
 6 **confirmation by United States mail.**

7 **The county election board shall send the confirmation required by**
 8 **this subsection not later than the end of the first business day after**
 9 **the county election board receives the voter's absentee ballot.**

10 SECTION 35. IC 3-11-4-7, AS AMENDED BY P.L.273-2001,
 11 SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 12 JANUARY 1, 2003]: Sec. 7. **(a) An absentee ballot application under**
 13 **section 6 of this chapter must**

14 ~~(1)~~ be made on a standard form approved under 42 U.S.C.
 15 1973ff(b) or on the form prescribed by the commission under
 16 section 5.1 of this chapter. ~~and~~

17 ~~(2) show that the:~~ **(b) An absentee ballot application under**
 18 **section 6 of this chapter from an:**

19 ~~(A) (1) absent uniformed services voter; (as defined in 42 U.S.C.~~
 20 ~~1973ff-6(1)); or~~

21 ~~(B) (2) address confidentiality program participant (as defined in~~
 22 ~~IC 5-26.5-1-6);~~

23 **must show that the voter or program participant is a resident**
 24 **otherwise qualified to vote in the precinct.**

25 **(c) An absentee ballot application under section 6 of this chapter**
 26 **from an overseas voter must show that the overseas voter was a**
 27 **resident and otherwise qualified to vote in the precinct where the**
 28 **voter resided before leaving the United States.**

29 SECTION 36. IC 3-11-4-8 IS AMENDED TO READ AS
 30 FOLLOWS [EFFECTIVE JANUARY 1, 2003]: Sec. 8. ~~(a) Except as~~
 31 ~~provided in subsection (b); an overseas voter may apply for an absentee~~
 32 ~~ballot from this state and vote by absentee ballot in an election in this~~
 33 ~~state for which the voter is qualified and in which absentee ballots are~~
 34 ~~used:~~

35 ~~(b)~~ An overseas voter who resides outside the United States and
 36 who is no longer a resident of a precinct in Indiana is only entitled to
 37 receive absentee ballots for a federal office under this chapter.

38 ~~(c) A county election board shall make blank absentee ballot~~
 39 ~~applications available for persons covered by this section after~~
 40 ~~November 20 preceding the election to which the application applies.~~
 41 ~~Except as provided in subsection (d); the person may apply for an~~
 42 ~~absentee ballot at any time after the applications are made available.~~



(d) A person covered by this section may apply for an absentee ballot for the next scheduled primary, general, or special election at any time by filing a standard form approved under 42 U.S.C. 1973ff(b).

(e) If the county election board receives an absentee ballot application from a person described by this section, the circuit court clerk shall mail to the person, free of postage to the extent as provided by 39 U.S.C. 3406, all ballots for the election immediately upon receipt of the ballots under sections 13 and 15 of this chapter.

(f) Whenever an overseas voter files an application for a primary election absentee ballot under this section and indicates on the application that the voter does not expect to be in the county on general election day and on the date of any special election conducted during the twelve (12) months following the date of the application, the application is an adequate application for a general election absentee ballot under this chapter and an absentee ballot for a special election conducted during the twelve (12) months following the date of the application. The circuit court clerk and county election board shall process this application and mail general election and special election absentee ballots to the voter in the same manner as other general election and special election absentee ballot applications and ballots are processed and mailed under this chapter.

SECTION 37. IC 3-11-4-17 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2003]: Sec. 17. Upon receipt of an application for an absentee ballot, a circuit court clerk shall file the application in the clerk's office and record **all of the following**:

- (1) The voter's name.
- (2) The date the application is received.
- (3) The date the ballot is ~~mailed or delivered~~ sent to the voter.
- (4) If mailed, the address to which the ballot is sent.
- (5) **If transmitted by fax, the fax number to which the ballot is faxed.**
- (6) The date the ballot is marked before the clerk or otherwise received from the voter. ~~and~~
- ~~(6)~~ (7) Any other information that is necessary or advisable.

SECTION 38. IC 3-11-4-18 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2003]: Sec. 18. (a) If a voter is entitled to vote an absentee ballot, ~~satisfies any of the following~~, the county election board shall, at the request of the voter, mail the official ballot, postage fully prepaid, to the voter at the address stated in the application:

- (1) **The voter will be absent from the county on election day.**
- (2) **The voter will be absent from the precinct of the voter's**



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residence on election day because of service as:

- (A) a precinct election officer under IC 3-6-5 or IC 3-6-6;
- (B) a watcher under IC 3-6-8, IC 3-6-9, or IC 3-6-10;
- (C) a challenger or pollbook holder under IC 3-6-7; or
- (D) a person employed by an election board to administer the election for which the absentee ballot is requested.

(3) The voter will be confined on election day to the voter's residence, to a health care facility, or to a hospital because of an illness or injury.

(4) The voter is a voter with disabilities.

(5) The voter is an elderly voter.

(6) The voter is prevented from voting due to the voter's care of an individual confined to a private residence because of illness or injury.

(7) The voter is scheduled to work at the person's regular place of employment during the entire twelve (12) hours that the polls are open.

(b) The ballot shall be mailed:

- (1) on the day of the receipt of the voter's application; or
- (2) not more than five (5) days after the date of delivery of the ballots under section 15 of this chapter;

whichever is later.

(c) In addition to the ballot mailed under subsection (b), the county election board shall mail a special absentee ballot for

- ~~(1) absent uniformed services voters; and~~
- ~~(2) overseas voters.~~

~~who will be outside of the United States on general election day.~~

(d) The ballot described in subsection (c):

- (1) must be mailed:
 - (A) on the day of the receipt of the voter's application; or
 - (B) not more than five (5) days after the date of delivery of the ballots under section 13(b) of this chapter;

whichever is later; and

- (2) may not be mailed after the absentee ballots described by section 13(a) of this chapter have been delivered to the circuit court clerk or the clerk's authorized deputy.

SECTION 39. IC 3-11-4-22 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2003]: Sec. 22. Each circuit court clerk shall **do both of the following**:

- (1) Keep a separate absentee ballot record for each precinct in the county. ~~and~~
- (2) Certify to each inspector, at the time that the absentee ballots



are delivered, **all the following:**

(A) The number of absentee ballots ~~delivered or mailed sent~~ to each absentee voter.

(B) The number of absentee ballots marked before the clerk.
~~and~~

(C) The names of the voters to whom the ballots were ~~delivered or mailed sent~~ or who marked ballots in person.

SECTION 40. IC 3-11-8-4.3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2003]: Sec. 4.3. ~~If a precinct contains less than two hundred fifty (250) active voters~~ (a) The county executive may locate the polls for ~~the~~ a precinct at the polls for an adjoining precinct, using the precinct election board of the adjoining precinct, **if all the following apply:**

(1) The county election board has adopted a general resolution stating the number of active voters in a precinct that the county election board will use when determining whether to apply this section to a precinct.

(2) The precinct has fewer active voters than the number stated in the resolution described in subdivision (1).

(3) The county election board, by unanimous vote of the board's entire membership, adopts a resolution to locate the polls of the precinct at the adjacent precinct.

(b) A resolution adopted by a county election board under subsection (a)(3) expires the day after the election to which the resolution applies.

SECTION 41. IC 3-11-8-22 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2003]: Sec. 22. (a) A voter challenged under section 20 of this chapter may vote if the voter makes an affidavit in writing that the voter is a legal voter of the precinct and **either of the following applies:**

(1) The voter's name appears on the registration list. ~~or~~

(2) The voter does one (1) of the following:

(A) Produces a certificate of error issued by a registration official of the county in accordance with IC 3-7-48 showing that the voter is registered in the precinct where the voter resides and offers to vote.

(B) Produces an affidavit executed under IC 3-10-10 or IC 3-10-11 if the voter executed an affidavit under those provisions.

(C) Makes an oral or a written affirmation under IC 3-10-12.

(b) After December 31, 2003, a voter challenged under section 20 of this chapter:



1 **(1) whose name does not appear on the registration list; and**
 2 **(2) who is not permitted to cast a vote under IC 3-7-48-7;**
 3 **is entitled to cast a provisional ballot under IC 3-11.7 if the voter**
 4 **makes an affidavit in writing that the voter is a legal voter of the**
 5 **precinct.**

6 SECTION 42. IC 3-11-8-23 IS AMENDED TO READ AS
 7 FOLLOWS [EFFECTIVE JANUARY 1, 2003]: Sec. 23. The affidavit
 8 of a challenged voter required by section 22 of this chapter must be
 9 sworn and affirmed and must contain the following:

- 10 (1) A statement that the voter is a citizen of the United States.
 11 (2) The voter's date of birth to the best of the voter's information
 12 and belief.
 13 (3) A statement that the voter has been a resident of the precinct
 14 for thirty (30) days immediately before this election or is qualified
 15 to vote in the precinct under IC 3-10-10, IC 3-10-11, or
 16 IC 3-10-12.
 17 (4) The voter's name and a statement that the voter is generally
 18 known by that name.
 19 (5) A statement that the voter has not voted and will not vote in
 20 any other precinct in this election.
 21 (6) The voter's occupation.
 22 (7) The voter's current residential address, including the street or
 23 number and if applicable, the voter's residential address thirty
 24 (30) days before the election, and the date the voter moved.
 25 (8) A statement that the voter understands that making a false
 26 statement on the affidavit is punishable under the penalties of
 27 perjury.
 28 **(9) After December 31, 2003, if the individual's name does not**
 29 **appear on the registration list and the individual is not**
 30 **entitled to vote under IC 3-7-48-7, a statement that the**
 31 **individual registered to vote and where the individual believes**
 32 **the individual registered to vote.**

33 SECTION 43. IC 3-11-10-1 IS AMENDED TO READ AS
 34 FOLLOWS [EFFECTIVE JANUARY 1, 2003]: Sec. 1. **(a)** A voter
 35 voting by absentee ballot shall make and subscribe to the affidavit
 36 prescribed by IC 3-11-4-21. The voter then shall, **except as provided**
 37 **in subsection (b), do the following:**

- 38 (1) Mark the ballot in the presence of no other person.
 39 (2) Fold each ballot separately.
 40 (3) Fold each ballot so as to conceal the marking.
 41 (4) Enclose each ballot, with the seal and signature of the circuit
 42 court clerk on the outside, together with any unused ballot, in the

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envelope provided.

(5) Securely seal the envelope. ~~and~~

(6) Do one (1) of the following:

(A) Mail the envelope to the county election board, with not more than one (1) ballot per envelope.

(B) Deliver the envelope to the county election board in person.

(C) Deliver the envelope to a member of the voter's household or a person designated as the attorney in fact for the voter under IC 30-5.

(b) A voter permitted to transmit the voter's absentee ballots by fax under IC 3-11-4-6 is not required to comply with subsection (a). The individual designated by the circuit court clerk to receive absentee ballots transmitted by fax shall do the following upon receipt of an absentee ballot transmitted by fax:

(1) Note the receipt of the absentee ballot in the records of the circuit court clerk as other absentee ballots received by the circuit court clerk are noted.

(2) Fold each ballot received from the voter separately so as to conceal the marking.

(3) Enclose each ballot in a blank absentee ballot envelope.

(4) Securely seal the envelope.

(5) Mark on the envelope: "Absentee Ballot Received by Fax".

(6) Securely attach to the envelope the faxed affidavit received with the voter's absentee ballots.

(c) Except as otherwise provided in this title, absentee ballots received by fax shall be handled and processed as other absentee ballots received by the circuit court clerk are handled and processed.

SECTION 44. IC 3-11-10-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2003]: Sec. 4. (a) Upon receipt of an absentee ballot, a county election board (or the absentee voter board in the office of the circuit court clerk) shall immediately examine the signature of the absentee voter to determine its genuineness.

(b) This subsection does not apply to an absentee ballot cast by a voter permitted to transmit the voter's absentee ballots by fax under IC 3-11-4-6. The board shall compare the signature as it appears upon the envelope containing the absentee ballot with the signature of the voter as it appears upon the application for the absentee ballot. The board may also compare the signature on the ballot envelope with any other admittedly genuine signature of the voter.

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(c) This subsection applies to an absentee ballot cast by a voter permitted to transmit the voter's absentee ballots by fax under IC 3-11-4-6. The board shall compare the signature as it appears on the affidavit transmitted with the voter's absentee ballot to the voter's signature as it appears on the application for the absentee ballot. The board may also compare the signature on the affidavit with any other admittedly genuine signature of the voter.

~~(b)~~ (d) If a member of the absentee voter board questions whether a signature on a ballot envelope **or transmitted affidavit** is genuine, the matter shall be referred to the county election board for consideration under section 5 of this chapter.

SECTION 45. IC 3-11-10-5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2003]: Sec. 5. If a county election board unanimously finds that the signature on a ballot envelope **or transmitted affidavit** is not genuine, the board shall write upon the ballot envelope **or transmitted affidavit** the words "The county election board has questioned the genuineness of the signature of this voter.". These ballots shall be delivered to the polls on election day under section 12 of this chapter with instructions to verify the voter's signature under section 15 of this chapter.

SECTION 46. IC 3-11-10-6 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2003]: Sec. 6. If a county election board is unable to unanimously determine whether the signature on a ballot envelope is genuine, the board shall write upon the ballot envelope **or transmitted affidavit** the words "Signature Disputed". The board then shall deliver all disputed ballot envelopes, together with any evidence of a documentary nature presented before the board, to the proper precinct at the same time that undisputed ballots are delivered.

SECTION 47. IC 3-11-10-8 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2003]: Sec. 8. If a county election board (or the absentee voter board in the office of the circuit court clerk) unanimously finds that the signature on a ballot envelope **or transmitted affidavit** is genuine, the board shall enclose immediately the accepted and unopened ballot envelope together with the voter's application for the absentee ballot in a large or carrier envelope. The envelope shall be securely sealed and endorsed with the name and official title of the circuit court clerk and the following words: "This envelope contains an absentee ballot and must be opened only at the polls on election day while the polls are open.".

SECTION 48. IC 3-11-10-14 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2003]: Sec. 14. Subject to

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section 11 of this chapter, absentee ballots received by mail **or fax** after the county election board has started the final delivery of the ballots to the precincts on election day are considered as arriving too late and need not be delivered to the polls.

SECTION 49. IC 3-11-10-15 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2003]: Sec. 15. At any time between the opening and closing of the polls on election day, the inspector, in the presence of the precinct election board, shall **do all of the following:**

- (1) Open the outer or carrier envelope containing an absentee ballot envelope and application.
- (2) Announce the absentee voter's name. ~~and~~
- (3) Compare the signature upon the application with the signature upon the affidavit on the ballot envelope **or transmitted affidavit attached to the ballot envelope.**

SECTION 50. IC 3-11-10-16 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2003]: Sec. 16. (a) If the inspector finds under section 15 of this chapter that:

- (1) the affidavit is properly executed;
- (2) the signatures correspond;
- (3) the absentee voter is a qualified voter of the precinct;
- (4) the absentee voter is registered;
- (5) the absentee voter has not voted in person at the election; and
- (6) in case of a primary election, if the absentee voter has not previously voted, the absentee voter has executed the proper declaration relative to age and qualifications and the political party with which the absentee voter intends to affiliate;

then the inspector shall open the envelope containing the absentee ballots so as not to deface or destroy the affidavit and take out each ballot enclosed without unfolding or permitting a ballot to be unfolded or examined.

(b) The inspector shall then hand the ballots to the judges who shall deposit the ballots in the proper ballot box and enter the absentee voter's name on the poll list, as if the absentee voter had been present and voted in person. **If the voter has registered and voted under IC 3-7-36-14, the inspector shall attach to the poll list the circuit court clerk's certification that the voter has registered.**

(c) If an absentee ballot is opened under this section in a precinct using voting machines, the precinct election board shall prepare certificates and memoranda under IC 3-12-2-6 that distinguish the votes cast by absentee ballots from votes cast on voting machines.

SECTION 51. IC 3-11-10-17, AS AMENDED BY P.L.38-1999,



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SECTION 45, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2003]: Sec. 17. (a) If the inspector finds under section 15 of this chapter that **any of the following applies, a ballot may not be accepted or counted:**

(1) The affidavit is insufficient or the ballot has not been endorsed with the initials of:

(A) the two (2) members of the absentee voter board in the office of the circuit court clerk under IC 3-11-4-19 or section 26 of this chapter;

(B) the two (2) members of the absentee voter board visiting the voter under section 25(b) of the chapter; or

(C) the two (2) appointed members of the county election board or their designated representatives under IC 3-11-4-19.

(2) A copy of the voter's signature has been furnished to the precinct election board and that the signatures do not correspond or there is no signature.

(3) The absentee voter is not a qualified voter in the precinct.

(4) The absentee voter has voted in person at the election.

(5) The absentee voter has not registered.

(6) The ballot is open or has been opened and resealed. **This subdivision does not permit an absentee ballot transmitted by fax to be rejected because the ballot was sealed in the absentee ballot envelope by the individual designated by the circuit court to receive absentee ballots transmitted by fax.**

(7) The ballot envelope contains more than one (1) ballot of any kind for the same office or public question.

(8) In case of a primary election, if the absentee voter has not previously voted, the voter failed to execute the proper declaration relative to age and qualifications and the political party with which the voter intends to affiliate. ~~or~~

(9) The ballot has been challenged and not supported.

~~then the ballots may not be accepted or counted:~~

(b) Subsection (c) applies whenever a voter with a disability is unable to make a signature:

(1) on an absentee ballot application that corresponds to the voter's signature in the records of the county voter registration office; or

(2) on an absentee ballot secrecy envelope that corresponds with the voter's signature:

(A) in the records of the county voter registration office; or

(B) on the absentee ballot application.

(c) The voter may request that the voter's signature or mark be

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attested to by:

- (1) the absentee voter board under section 25(b) of this chapter;
- (2) a member of the voter's household; or
- (3) an individual serving as attorney in fact for the voter.

(d) An attestation under subsection (c) provides an adequate basis for an inspector to determine that a signature or mark complies with subsection (a)(2).

SECTION 52. IC 3-11-10-24, AS AMENDED BY P.L.38-1999, SECTION 46, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2003]: Sec. 24. (a) Except as provided in subsection (b), ~~each a voter entitled to vote by absentee ballot who satisfies any of the following~~ is entitled to vote by mail:

(1) The voter will be absent from the county on election day.

(2) The voter will be absent from the precinct of the voter's residence on election day because of service as:

(A) a precinct election officer under IC 3-6-5 or IC 3-6-6;

(B) a watcher under IC 3-6-8, IC 3-6-9, or IC 3-6-10;

(C) a challenger or pollbook holder under IC 3-6-7; or

(D) a person employed by an election board to administer the election for which the absentee ballot is requested.

(3) The voter will be confined on election day to the voter's residence, to a health care facility, or to a hospital because of an illness or injury.

(4) The voter is a voter with disabilities.

(5) The voter is an elderly voter.

(6) The voter is prevented from voting due to the voter's care of an individual confined to a private residence because of illness or injury.

(7) The voter is scheduled to work at the person's regular place of employment during the entire twelve (12) hours that the polls are open.

(b) A voter with disabilities who:

(1) is unable to make a voting mark on the ballot or sign the absentee ballot secrecy envelope; and

(2) requests that the absentee ballot be delivered to an address within Indiana;

must vote before an absentee voter board under section 25(b) of this chapter.

(c) After a voter has mailed an absentee ballot to the office of the circuit court clerk, the voter may not recast a ballot, except as provided in:

- (1) section 1.5 of this chapter; or



(2) section 33 of this chapter.

SECTION 53. IC 3-11-10-25 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2003]: Sec. 25. (a) ~~Voters A voter who are entitled to vote~~ **voter** by absentee ballot because of:

(1) illness or injury; or

(2) caring for a confined person at a private residence; ~~under IC 3-11-4-1~~ and who ~~are~~ **is** within the county on election day may vote before an absentee voter board or by mail.

(b) If requested by a voter described in subsection (a) or by a voter with disabilities whose precinct is not accessible to voters with disabilities, an absentee voter board shall visit the voter's place of confinement, the residence of the voter with disabilities, or the private residence:

(1) during the regular office hours of the circuit court clerk;

(2) at a time agreed to by the board and the voter;

(3) on any of the twelve (12) days immediately before election day; and

(4) only once before an election, unless:

(A) the confined voter is unavailable at the time of the board's first visit due to a medical emergency; or

(B) the board, in its discretion, decides to make an additional visit.

(c) This subsection applies to a voter confined due to illness or injury. An absentee voter board may not be denied access to the voter's place of confinement if the board is present at the place of confinement at a time:

(1) agreed to by the board and the voter; and

(2) during the regular office hours of the circuit court clerk. A person who knowingly violates this subsection commits obstruction or interference with an election officer in the discharge of the officer's duty, a violation of IC 3-14-3-4.

(d) The county election board, by unanimous vote of the board's entire membership, may authorize an absentee voter board to visit a voter who is confined due to illness or injury and will be outside of the county on election day in accordance with the procedures set forth in subsection (b).

SECTION 54. IC 3-11-10-26, AS AMENDED BY P.L.167-2001, SECTION 1, AND P.L.199-2001, SECTION 23, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2003]: Sec. 26. (a) As an alternative to voting by mail, a voter **is** entitled to cast an absentee ballot ~~may vote by absentee ballot~~ before an absentee voter board:

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- (1) in the office of the circuit court clerk; or
- (2) at a satellite office established under section 26.3 of this chapter.

(b) The voter must sign an application on the form prescribed by the commission under IC 3-11-4-5.1 before being permitted to vote. The application must be received by the circuit court clerk not later than the time prescribed by IC 3-11-4-3.

(c) The voter may vote before the board not more than twenty-nine (29) days nor later than noon on the day before election day.

(d) The absentee voter board in the office of the circuit court clerk must permit voters to cast absentee ballots under this section for at least seven (7) hours on each of the two (2) Saturdays preceding election day.

(e) Notwithstanding subsection (d), in a county with a population of less than twenty thousand (20,000), the absentee voter board in the office of the circuit court clerk, with the approval of the county election board, may reduce the number of hours available to cast absentee ballots under this section to a minimum of four (4) hours on each of the two (2) Saturdays preceding election day.

SECTION 55. IC 3-11.5-2-5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2003]: **Sec. 5. An absentee ballot application or an absentee ballot is considered "sent" to a voter if the application or ballot is:**

- (1) sent by United States mail addressed to the voter;
- (2) transmitted by fax to a number provided by the voter; or
- (3) personally given to the voter.

SECTION 56. IC 3-11.5-4-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2003]: Sec. 1. Each circuit court clerk shall do the following:

- (1) Keep a separate absentee ballot record for each precinct in the county.
- (2) Certify to each inspector or the inspector's representative, at the time that the ballots and supplies are delivered under IC 3-11-3, the names of the voters:
 - (A) to whom absentee ballots were ~~delivered or mailed~~ sent or who marked ballots in person; and
 - (B) whose ballots have been received by the county election board under IC 3-11-10.

SECTION 57. IC 3-11.5-4-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2003]: Sec. 4. If a county election board finds that the signature on a ballot envelope **or**

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1 **transmitted affidavit** is not genuine, the board shall write upon the
 2 ballot envelope the words "The county election board has rejected this
 3 ballot because the signature of this voter is not genuine."

4 SECTION 58. IC 3-11.5-4-5 IS AMENDED TO READ AS
 5 FOLLOWS [EFFECTIVE JANUARY 1, 2003]: Sec. 5. If a county
 6 election board unanimously finds that the signature on a ballot
 7 envelope **or transmitted affidavit** is genuine, the board shall enclose
 8 immediately the accepted and unopened ballot envelope, together with
 9 the voter's application for the absentee ballot, in a large or carrier
 10 envelope. The envelope shall be securely sealed and endorsed with the
 11 name and official title of the circuit court clerk and the following
 12 words: "This envelope contains an absentee ballot and must be opened
 13 only on election day under IC 3-11.5."

14 SECTION 59. IC 3-11.5-4-8 IS AMENDED TO READ AS
 15 FOLLOWS [EFFECTIVE JANUARY 1, 2003]: Sec. 8. (a) Each county
 16 election board shall certify the names of voters:

17 (1) to whom absentee ballots were ~~delivered or mailed sent~~ or
 18 who marked ballots in person; and

19 (2) whose ballots have been received by the board under this
 20 chapter;

21 after the certification under section 1 of this chapter and not later than
 22 noon on election day.

23 (b) The county election board shall have:

24 (1) the certificates described in subsection (a); **and**

25 (2) **the circuit court clerk's certificates for voters who have**
 26 **registered and voted under IC 3-7-36-14;**

27 delivered to the precinct election boards at their respective polls on
 28 election day by couriers appointed under section 22 of this chapter.

29 (c) The certificates shall be delivered not later than 3 p.m. on
 30 election day.

31 SECTION 60. IC 3-11.5-4-9 IS AMENDED TO READ AS
 32 FOLLOWS [EFFECTIVE JANUARY 1, 2003]: Sec. 9. (a) Upon
 33 delivery of the ~~certificate~~ **certificates** under section 8 of this chapter to
 34 a precinct election board, the inspector shall **do the following in the**
 35 **presence of the poll clerks:**

36 (1) Mark the poll list. ~~in the presence of the poll clerks.~~

37 (2) **Attach the certificates of voters who have registered and**
 38 **voted under IC 3-7-36-14 to the poll list.**

39 The poll clerks shall sign the statement printed on the certificate
 40 indicating that the inspector marked the poll list **and attached the**
 41 **certificates** under this section in the presence of both poll clerks to
 42 indicate that the absentee ballot of the voter has been received by the

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1 county election board.

2 (b) If a person listed in the certificate has voted in person at the
3 polls before the delivery of the certificate, the inspector shall initial the
4 voter's name on the certificate in the presence of both poll clerks. The
5 poll clerks shall sign the statement printed on the certificate **supplied**
6 **under section 1 of this chapter** indicating that the inspector initialed
7 the names of voters under this subsection in the presence of both poll
8 clerks.

9 (c) The inspector shall then deposit:

- 10 (1) the certificate prepared under section 1 of this chapter;
11 (2) the certificate prepared under section 8 of this chapter; and
12 (3) any challenge affidavit executed by a qualified person under
13 section 16 of this chapter;

14 in an envelope in the presence of both poll clerks.

15 (d) The inspector shall seal the envelope. The inspector and each
16 poll clerk shall then sign a statement printed on the envelope indicating
17 that the inspector or poll clerk has complied with the requirements of
18 this chapter governing the marking of the poll list and certificates.

19 (e) The couriers shall immediately return the envelope described in
20 subsection (c) to the county election board. Upon delivering the
21 envelope to the county election board, each courier shall sign a
22 statement printed on the envelope indicating that the courier has not
23 opened or tampered with the envelope since the envelope was delivered
24 to the courier.

25 SECTION 61. IC 3-11.5-4-10 IS AMENDED TO READ AS
26 FOLLOWS [EFFECTIVE JANUARY 1, 2003]: Sec. 10. Subject to
27 section 7 of this chapter, absentee ballots received by mail **or fax** after
28 noon on election day are considered as arriving too late and may not be
29 counted.

30 SECTION 62. IC 3-11.5-4-11 IS AMENDED TO READ AS
31 FOLLOWS [EFFECTIVE JANUARY 1, 2003]: Sec. 11. At any time
32 after the couriers return the certificate under section 9 of this chapter,
33 absentee ballot counters appointed under section 22 of this chapter, in
34 the presence of the county election board, shall, except for a ballot
35 rejected under section 13 of this chapter:

- 36 (1) open the outer or carrier envelope containing an absentee
37 ballot envelope and application;
38 (2) announce the absentee voter's name; and
39 (3) compare the signature upon the application with the signature
40 upon the affidavit on the ballot envelope **or transmitted**
41 **affidavit.**

42 SECTION 63. IC 3-11.5-4-13, AS AMENDED BY P.L.38-1999,

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SECTION 53, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2003]: Sec. 13. (a) If the absentee ballot counters find under section 11 of this chapter that **any of the following applies, the ballots shall be rejected:**

(1) The affidavit is insufficient or that the ballot has not been endorsed with the initials of:

(A) the two (2) members of the absentee voter board in the office of the clerk of the circuit court under IC 3-11-4-19 or IC 3-11-10-26;

(B) the two (2) members of the absentee voter board visiting the voter under IC 3-11-10-25; or

(C) the two (2) appointed members of the county election board or their designated representatives under IC 3-11-4-19.

(2) The signatures do not correspond or there is no signature.

(3) The absentee voter is not a qualified voter in the precinct.

(4) The absentee voter has voted in person at the election.

(5) The absentee voter has not registered.

(6) The ballot is open or has been opened and resealed. **This subdivision does not permit an absentee ballot transmitted by fax to be rejected because the ballot was sealed in the absentee ballot envelope by the individual designated by the circuit court to receive absentee ballots transmitted by fax.**

(7) The ballot envelope contains more than one (1) ballot of any kind.

(8) In case of a primary election, if the absentee voter has not previously voted, the voter failed to execute the proper declaration relative to age and qualifications and the political party with which the voter intends to affiliate. ~~or~~

(9) The ballot has been challenged and not supported.

~~the ballots shall be rejected:~~

(b) If the absentee ballot counters are unable to agree on a finding described under this section or section 12 of this chapter, the county election board shall make the finding.

(c) The absentee ballot counters or county election board shall issue a certificate to a voter whose ballot has been rejected under this section if the voter appears in person before the board not later than 5 p.m. on election day. The certificate must state that the voter's absentee ballot has been rejected and that the voter may vote in person under section 21 of this chapter if otherwise qualified to vote.

SECTION 64. IC 3-11.5-4-24 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2003]: Sec. 24. (a) In addition to the preparations described in IC 3-11-11-2, **IC 3-11-12-24,**

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IC 3-11-13-27, or IC 3-11-14-16, the inspector shall:

(1) mark the poll list; and

(2) attach the certificates of voters who have registered and voted under IC 3-7-36-14 to the poll list;

in the presence of the poll clerks to indicate the voters of the precinct whose absentee ballots have been received by the county election board according to the certificate supplied under section 1 of this chapter.

(b) The poll clerks shall sign the statement printed on the certificate supplied under section 1 of this chapter indicating that the inspector:

(1) marked the poll list; and

(2) attached the certificates described in subsection (a)(2); under this section in the presence of both poll clerks.

(c) The inspector shall retain custody of the certificate supplied under section 1 of this chapter until the certificate is returned under section 9 of this chapter.

SECTION 65. IC 3-11.7 IS ADDED TO THE INDIANA CODE AS A NEW ARTICLE TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2003]:

ARTICLE 11.7. PROVISIONAL VOTING

Chapter 1. Application and General Provisions

Sec. 1. This article applies to all elections held after December 31, 2003.

Sec. 2. (a) Except as provided in subsection (b), a provisional ballot must have the same form as an absentee ballot for:

(1) the election for which the ballot is cast; and

(2) the precinct in which the ballot is cast.

(b) A provisional ballot must indicate that the ballot is a provisional ballot and not an absentee ballot.

Sec. 3. Except as otherwise provided in this article, the procedures described in this title for paper ballots apply to provisional ballots.

Sec. 4. Each circuit court clerk shall:

(1) not less than sixty (60) days before the date on which a general, primary, or municipal election is held; or

(2) not more than three (3) days after the date on which a special election is ordered;

estimate the number of provisional ballots that will be required in the county for the election.

Sec. 5. (a) Provisional ballots for:

(1) President and Vice President of the United States;

(2) United States Senator;

(3) all state offices; and

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(4) the ratification or rejection of a public question to be voted for by the electorate of the entire state or for the retention of a judge of the Indiana supreme court or the Indiana court of appeals;

shall be prepared and printed under the direction of the election division.

(b) The election division shall have the ballots printed upon certification of the political party tickets and independent candidates.

(c) Ballots prepared under this section must provide space for the provisional voter to cast a write-in ballot.

(d) The provisional ballots that are prepared and printed under this section shall be delivered to the circuit court clerk or the clerk's authorized deputy not later than forty-five (45) days before a general election or twenty-nine (29) days before a special election. The provisional ballots shall be delivered in the same manner that other official ballots are delivered.

Sec. 6. (a) All provisional ballots other than those described in section 5 of this chapter shall be prepared and printed under the direction of each county election board.

(b) After completing the estimate required by section 4 of this chapter, the county election board shall immediately prepare the ballots and have them printed.

(c) Ballots prepared by the county election board under this section must provide space for the voter to cast a write-in ballot.

(d) The provisional ballots that are prepared and printed under this section shall be delivered to the circuit court clerk not later than:

(1) forty-five (45) days before a general, primary, or municipal election;

(2) thirty-two (32) days before a special election.

Sec. 7. Each provisional ballot must be signed by the circuit court clerk or an individual authorized by the circuit court clerk and have the circuit court clerk's seal affixed.

Sec. 8. The county election board shall provide to each precinct election board envelopes marked "Provisional Ballot" in which a provisional voter places the voter's provisional ballot.

Sec. 9. Each package of provisional ballots delivered to a circuit court clerk shall be plainly marked on an appropriate attached label with the words: "This package contains _____ (giving number of ballots) provisional ballots.". The clerk shall securely keep all ballots in the clerk's office and shall distribute them to

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1 applicants as provided in this article.

2 **Chapter 2. Casting a Provisional Ballot**

3 **Sec. 1. An individual:**

- 4 (1) who is challenged;
 5 (2) whose name does not appear on the registration list; and
 6 (3) who is not permitted to vote under IC 3-7-48-7;

7 may cast a provisional ballot if the individual executes an affidavit
 8 described in IC 3-11-8-23.

9 **Sec. 2. (a) A provisional voter shall do the following:**

- 10 (1) Mark the ballot in the presence of no other person, unless
 11 the voter requests help in marking a ballot under IC 3-11-9.
 12 (2) Fold each ballot separately.
 13 (3) Fold each ballot so as to conceal the marking.
 14 (4) Enclose each ballot, with the seal and signature of the
 15 circuit court clerk on the outside, together with any unused
 16 ballot, in the envelope provided by the county election board
 17 under IC 3-11.7-1-8.
 18 (5) Securely seal the envelope.

19 (b) A provisional voter may mark a ballot with a pen or a lead
 20 pencil.

21 **Sec. 3. (a) The precinct election board shall affix to the envelope**
 22 **the challenger's affidavit and the affidavit executed by the**
 23 **provisional voter under section 1 of this chapter.**

24 (b) The precinct election board shall securely keep the sealed
 25 envelope, along with the affidavits affixed to the envelope, in
 26 another envelope or container marked "Provisional Ballots".

27 **Sec. 4. At the close of the polls, the precinct election board shall**
 28 **seal:**

- 29 (1) all the provisional ballots; and
 30 (2) any spoiled provisional ballots;

31 in the container described in section 3(b) of this chapter and mark
 32 on the container the number of provisional ballots contained. The
 33 inspector shall return the container with all the provisional ballots
 34 to the circuit court clerk after the close of the polls.

35 **Chapter 3. Provisional Ballot Counters**

36 **Sec. 1. Each county election board shall appoint teams of**
 37 **provisional ballot counters consisting of two (2) voters of the**
 38 **county, one (1) from each of the two (2) political parties that have**
 39 **appointed members on the county election board.**

40 **Sec. 2. An otherwise qualified person is eligible to serve as a**
 41 **counter unless the person:**

- 42 (1) is unable to read, write, and speak the English language;

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(2) has any property bet or wagered on the result of the election;

(3) is a candidate to be voted for at the election, except as an unopposed candidate for precinct committeeman or state convention delegate; or

(4) is the spouse, parent, father-in-law, mother-in-law, child, son-in-law, daughter-in-law, grandparent, grandchild, brother, sister, brother-in-law, sister-in-law, uncle, aunt, nephew, or niece of a candidate or declared write-in candidate to be voted for at the election except as an unopposed candidate. This subdivision disqualifies a person whose relationship to the candidate is the result of birth, marriage, or adoption.

Sec. 3. Not later than noon ten (10) days before an election, each county election board shall notify the county chairmen of the two (2) political parties that have appointed members on the county election board of the number of teams of counters to be appointed under this section.

Sec. 4. The county chairmen shall make written recommendations for the appointments to the county election board not later than noon three (3) days before the election. The county election board shall make the appointments as recommended.

Sec. 5. If a county chairman fails to make any recommendations, the county election board may appoint any voters of the county.

Sec. 6. An individual serving as an absentee ballot counter under IC 3-11.5-4-12 may also serve as a provisional ballot counter under this chapter.

Chapter 4. Watchers for Political Parties, Candidates, and the Media

Sec. 1. The following apply for the purposes of IC 3-6-8, IC 3-6-9, and IC 3-6-10:

(1) The location for counting provisional ballots shall be treated the same as a precinct poll.

(2) A provisional ballot counter shall be treated the same as a precinct election official.

Sec. 2. (a) Political parties or independent candidates described in IC 3-6-8-1 may appoint watchers at the location for counting provisional ballots.

(b) A watcher appointed under this section:

(1) has the rights; and

(2) must follow the requirements;

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1 set forth in IC 3-6-8.

2 Sec. 3. (a) A candidate entitled to appoint a watcher under
3 IC 3-6-9 may appoint a watcher at the location for counting
4 provisional ballots.

5 (b) A watcher appointed under this section:

6 (1) has the rights; and

7 (2) must follow the requirements;

8 set forth in IC 3-6-9.

9 Sec. 4. (a) Media entitled to appoint a watcher under IC 3-6-10
10 may appoint a watcher at the location for counting provisional
11 ballots.

12 (b) A watcher appointed under this section:

13 (1) has the rights; and

14 (2) must follow the requirements;

15 set forth in IC 3-6-10.

16 Chapter 5. Counting Provisional Ballots

17 Sec. 1. (a) After the close of the polls, provisional ballots shall be
18 counted as provided in this chapter.

19 (b) All provisional ballots must be counted by not later than
20 noon on the Monday following the election.

21 Sec. 2. (a) Except as provided in section 5 of this chapter, if the
22 county election board determines that all the following apply, a
23 provisional ballot is valid and shall be counted under this chapter:

24 (1) The affidavit executed by the provisional voter under
25 IC 3-11.7-2-1 is properly executed.

26 (2) The provisional voter is a qualified voter of the precinct.

27 (3) Based on all the information available to the county
28 election board, including:

29 (A) information provided by the provisional voter;

30 (B) information contained in the county's voter
31 registration records; and

32 (C) information contained in the statewide voter
33 registration file;

34 the provisional voter registered to vote at a registration
35 agency under this article on a date within the registration
36 period.

37 (b) If the provisional voter has provided information regarding
38 the registration agency where the provisional voter registered to
39 vote, the board may not determine that the provisional voter did
40 not register unless both of the following apply:

41 (1) The board makes an actual inquiry of the registration
42 agency where the provisional voter states the provisional

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voter registered.

(2) The registration agency informs the board that the registration agency has no record of the provisional voter's registration.

Sec. 3. (a) If the board determines that section 2(a)(1), 2(a)(2), or 2(a)(3) of this chapter does not apply, all the following apply:

(1) The provisional ballot is invalid.

(2) The provisional ballot may not be counted.

(3) The provisional ballot envelope containing the ballots cast by the provisional voter may not be opened.

(b) If the county election board determines that a provisional ballot is invalid, a notation shall be made on the provisional ballot envelope: "Provisional ballot determined invalid."

Sec. 4. If the board determines that a provisional ballot is valid under section 2 of this chapter, the provisional ballot envelope shall be opened. The outside of each provisional ballot shall also be marked to identify the precinct and the date of the election of the ballots.

Sec. 5. (a) If any ballot cast by a provisional voter does not contain the initials of the poll clerks, the ballot shall, without being unfolded to disclose how the ballot is marked, be endorsed with the word "Rejected".

(b) All rejected provisional ballots shall be enclosed and securely sealed in an envelope on which is written "Rejected provisional ballots."

Sec. 6. The valid provisional ballots printed by the election division shall be counted before counting the valid provisional ballots printed by the county election board.

Sec. 7. The provisional ballots shall be counted by laying each ballot upon a table in the order in which the ballots were opened.

Sec. 8. (a) During the counting of the ballots, one (1) counter shall read the name of the candidates voted for from the ballots.

(b) A:

(1) member of the county election board who is not a member of the same political party as the counter; or

(2) representative designated by the member;

shall view the ballots as the names are read.

Sec. 9. During the counting of the ballots:

(1) the counter counting the ballots;

(2) a member of the county election board; or

(3) a representative designated by the member;

may protest the counting of any ballot or any part of a ballot.

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1 **Sec. 10.** If the counters cannot agree whether to count a ballot
 2 following a protest under section 9 of this chapter, the question
 3 shall be referred to the county election board for a decision.

4 **Sec. 11.** Following a decision by the counters or the county
 5 election board, the counters shall sign each protested ballot.

6 **Sec. 12.** If a ballot or any part of a ballot is protested and the
 7 protest is resolved, the counter immediately shall write on the back
 8 of the protested ballot the word "counted" or "not counted", as
 9 appropriate.

10 **Sec. 13.** A counter may not count provisional ballots for a
 11 precinct under this chapter while counting provisional ballots for
 12 any other precinct.

13 **Sec. 14.** (a) This section applies if at least two (2) sets of counters
 14 in a county are counting provisional ballots under this chapter.

15 (b) A set of counters may count provisional ballots from a
 16 precinct while another set of counters is counting provisional
 17 ballots from another precinct in the county if each set of counters
 18 counts the ballots in compliance with section 8 of this chapter.

19 **Sec. 15.** (a) This section applies to the counting of write-in
 20 provisional ballots.

21 (b) If a voter writes an abbreviation, a misspelling, or other
 22 minor variation instead of the correct name of a candidate or
 23 political party, that vote shall be counted if the intent of the voter
 24 can be determined.

25 (c) If a voter casts a ballot under this section for President or
 26 Vice President of the United States and writes in the name of a
 27 candidate or political party that has not certified a list of electors
 28 under IC 3-10-4-5, the vote for President or Vice President of the
 29 United States is void. The remaining votes on the ballot may be
 30 counted.

31 (d) IC 3-12-1-7 applies to write-in provisional ballots.

32 **Sec. 16.** When all the votes have been counted, the counters shall
 33 prepare a certificate stating the number of votes that each
 34 candidate received for each office and the number of votes cast on
 35 each public question.

36 **Sec. 17.** The number of votes that each candidate and public
 37 question received shall be written in words and numbers. The
 38 counters shall prepare a memorandum of the total votes cast for
 39 each candidate and on each public question and ensure that each
 40 member of the county election board receives a copy of the
 41 memorandum.

42 **Sec. 18.** The counters shall deliver the certificates prepared

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under section 16 of this chapter and the tally papers to the county election board immediately upon the tabulation of the vote in each precinct.

Sec. 19. As soon as the ballots have been counted, the counters shall do the following in the presence of the county election board:

- (1) Place in a strong paper envelope or bag the following:
 - (A) All provisional ballots, voted and spoiled.
 - (B) All provisional ballots:
 - (i) determined invalid under section 3 of this chapter; or
 - (ii) rejected under section 5 of this chapter.
 - (C) All protested and uncounted provisional ballots.
 - (D) All provisional ballot envelopes.
 - (E) All executed affidavits relating to the provisional ballots.
 - (F) The tally papers.
- (2) Securely seal the envelope or bag.
- (3) Have both counters initial the envelope or bag.
- (4) Plainly mark on the outside of the envelope or bag in ink the precinct in which the provisional ballots were cast.
- (5) Deliver the envelope or bag to the circuit court clerk.
- (6) Notify the circuit court clerk of the number of ballots placed in the envelope or bag.

Sec. 20. Upon delivery of the envelope or bag to the circuit court clerk, each counter shall take and subscribe an oath before the clerk stating that the counter:

- (1) securely kept the ballots and papers in the envelope or bag;
- (2) did not permit any person to open the envelope or bag or to otherwise touch or tamper with the ballots; and
- (3) has no knowledge of any other person opening the envelope or bag.

Sec. 21. The circuit court clerk shall file the oath taken under section 20 of this chapter with the clerk's other election documents.

Sec. 22. The circuit court clerk shall place the envelope or bag in a receptacle provided by the county executive with two (2) different locks.

Sec. 23. The circuit court clerk shall do the following:

- (1) Lock the receptacle provided under section 22 of this chapter.
- (2) Retain one (1) key to one (1) lock of the receptacle.
- (3) Give one (1) key to the other lock of the receptacle to the member of the county election board who is not a member of



the same political party as the clerk.

Sec. 24. The circuit court clerk shall preserve the receptacle containing the envelope or bag in the clerk's office for the period required under IC 3-10-1-31.

Sec. 25. If the election is contested, the clerk shall preserve the receptacle containing the envelope or bag as long as the contest is undetermined. During that period, the clerk shall keep the receptacle securely locked, subject only to an order of the court trying a contest.

Sec. 26. When permitted under IC 3-10-1-31, the clerk and a county election board member of the opposite political party shall remove the envelope or bag from the receptacle and destroy the envelope or bag.

Sec. 27. A county election board may contract with a state educational institution (as defined in IC 20-12-0.5-1) to dispose of the ballots. The contract must provide that:

(1) the ballots will be used by the state educational institution to conduct election research; and

(2) the state educational institution may not receive any ballots under this section until the period for retention under IC 3-10-1-31 has expired.

Sec. 28. Immediately upon completion of the vote count, the counters shall make and sign a certificate for the news media showing the total number of provisional ballot votes received by each candidate and on each public question in the precinct.

Sec. 29. The counters shall deliver the certificate to the circuit court clerk as soon as the certificate is completed. The circuit court clerk shall deliver the certificate made for the news media to any person designated to receive the certificate by the editors of the newspapers published in the county or by the managers of the radio and television stations operating in the county immediately upon the completion of the certificate, but not before the closing of the polls.

Chapter 6. Additional Provisions Relating to Provisional Ballots

Sec. 1. (a) Provisional ballot counters shall conduct the activities conducted by precinct election officials under IC 3-12-4.

(b) The returns of provisional ballot counters shall be treated the same as the returns of a precinct election board under IC 3-12-4.

Sec. 2. A provisional ballot is considered to be cast in the precinct in which the voter who cast the ballot resides for the purpose of the following:

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1 **(1) IC 3-12-6.**

2 **(2) IC 3-12-11.**

3 **(3) IC 3-12-12.**

4 SECTION 66. IC 3-12-3-11 IS AMENDED TO READ AS
5 FOLLOWS [EFFECTIVE JANUARY 1, 2003]: Sec. 11. (a) The return
6 printed by the automatic tabulating machines, along with the return of
7 votes by absentee **and provisional** voters, constitutes the official return
8 of each precinct. Upon completion of the count, the return is open to
9 the public.

10 (b) This subsection applies if the votes have been cast on a ballot
11 card voting system that is not designed to allow the counting and
12 tabulation of votes by the precinct election board. The circuit court
13 clerk shall, upon request, furnish to the media in the area the results of
14 the tabulation.

15 (c) This subsection applies if the votes have been cast on a ballot
16 card voting system that is designed to allow the counting and tabulation
17 of votes by the precinct election board. Upon receiving the certificate
18 for the media prepared under section 2(c) of this chapter, the circuit
19 court clerk shall deliver the certificate to any person designated to
20 receive the certificate by the editors of the newspapers published in the
21 county or by the managers of the radio and television stations operating
22 in the county.

23 SECTION 67. IC 3-12-3-12 IS AMENDED TO READ AS
24 FOLLOWS [EFFECTIVE JANUARY 1, 2003]: Sec. 12. (a) Votes by
25 absentee voters may be cast on **any of the following or any**
26 **combination of the following:**

27 **(1) Paper ballots. ~~or~~**

28 **(2) Ballot cards. ~~or both methods may be used.~~**

29 **(3) Electronic voting systems, if both of the following are**
30 **satisfied:**

31 **(A) The voting system software is capable of confidentially**
32 **identifying and deleting the votes cast by an absentee voter**
33 **who is successfully challenged.**

34 **(B) The county election board adopts, by unanimous vote**
35 **of the board's entire membership, the casting of absentee**
36 **votes on electronic voting systems.**

37 **(b)** The ballots may be counted by an automatic tabulating machine
38 or by special canvassing boards appointed by and under the direction
39 of the county election board.

40 **(c)** A true copy of each paper absentee ballot may be made on a
41 ballot card which, after being verified in the presence of witnesses,
42 shall be counted in the same manner as other ballot cards.

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1 SECTION 68. IC 3-14-2-27 IS AMENDED TO READ AS
 2 FOLLOWS [EFFECTIVE JANUARY 1, 2003]: Sec. 27. A precinct
 3 election officer ~~who~~, at the close of the polls, ~~or~~ an absentee ballot
 4 counter acting under IC 3-11.5-5 or IC 3-11.5-6, **or a provisional**
 5 **ballot counter acting under IC 3-11.7-5** who knowingly:

6 (1) causes the vote to be incorrectly taken down for a candidate or
 7 public question; or

8 (2) makes a false statement, certificate, or return of any kind of
 9 that vote;

10 commits a Class D felony.

11 SECTION 69. IC 3-14-4-8 IS AMENDED TO READ AS
 12 FOLLOWS [EFFECTIVE JANUARY 1, 2003]: Sec. 8. A member of
 13 a precinct election board, ~~or~~ an absentee ballot counter appointed under
 14 IC 3-11.5-4-22, **or a provisional ballot counter appointed under**
 15 **IC 3-11.7-3** who knowingly:

16 (1) opens or marks, by folding or otherwise, a ballot presented by
 17 a voter, except as provided by law; or

18 (2) tries to find out how the voter voted before the ballot is
 19 deposited in the ballot box or cast on a voting machine, ballot
 20 card voting system, or electronic voting system or counted by the
 21 absentee ballot counter;

22 commits a Class D felony.

23 SECTION 70. THE FOLLOWING ARE REPEALED [EFFECTIVE
 24 JANUARY 1, 2003]: IC 3-7-36-12; IC 3-7-36-13; IC 3-11-4-9;
 25 IC 3-11.5-4-25; IC 3-11.5-4-26; IC 3-11.5-4-27.

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